

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill creates an arbitration program within the 13th and 6th Judicial Circuits with jurisdiction to hear certain disputes between property owners and homeowners' associations, and requires the Department of Business and Professional Regulation in cooperation with the chief judges of the two circuits to implement the program.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

A homeowners' association is a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term "homeowners' association" does not include a community development district or other similar special taxing district created pursuant to statute.¹ Homeowners' associations are regulated by ch. 720, F.S. A homeowners' association is authorized to enforce the governing documents of the community, which includes the recorded declaration of covenants, the articles of incorporation, and the bylaws of the homeowners' association. The declaration of covenants establishes a set of permanent restrictions governing the use of a homeowner's property, and the homeowners' association has the power under the governing documents and by statute to levy assessments for violations of the covenants.

Disputes between property owners and their association are common, and usually arise out of the violation of the association's covenants, the penalty imposed for such violation, or an allegation that the association is selectively enforcing a restriction or covenant. Homeowners' association law provides a means for resolving these disputes through arbitration and mediation programs maintained within the Department of Business and Professional Regulation.² Where mediation is unsuccessful, a lawsuit may be filed in the county or circuit court having jurisdiction. Chapter 44, F.S. also provides for a mediation and arbitration program within the state court system.

Effect of Bill

This bill creates a Home Court Advantage Pilot Program (pilot program) in ss. 720.501-720.507, F.S., for the purpose of establishing an inexpensive, expedient, simplified court procedure as an independent venue for property owners in a homeowners' association to resolve disputes relating to the governing documents informally without the restrictions and procedures required for formal actions in circuit court. This bill provides that the Pilot Program be carried out for a period of two years.

This bill provides that the Pilot Program will be implemented and administered by the Department of Business and Professional Regulation (DBPR) in cooperation with the chief judges of the 13th and 6th Judicial Circuits³.

Rules and Procedures

This bill creates s. 720.503, F.S., to provide that the rules and procedures for the operation of the pilot program are to be the same rules that have been adopted by the Division of Florida Land Sales,

¹ Section 720.301(9), F.S.

² Section 720.311, F.S.

³ The 13th circuit encompasses Hillsborough County and the 6th circuit encompasses Pinellas County.

Condominiums, and Mobile Homes (division) within DBPR pursuant to s. 718.1255, F.S.⁴ This bill also provides that the division, with the cooperation of the chief judge of the circuit court, will provide for the use of the courtroom facilities, case management, and record-keeping facilities for the operation of the pilot program. The division is required to provide a report to the President of the Senate, the Speaker of the House of Representatives, and the minority leader of the House and Senate. The report must evaluate the successes and shortcomings of the pilot program and make recommendations on whether to continue, expand, modify, or eliminate the pilot program.

Jurisdiction of the Pilot Program

This bill creates s. 720.504, F.S., to provide for the jurisdiction of the pilot program.

This bill provides that the pilot program handle all disputes regarding the enforceability or validity of the governing documents of the community, the reasonableness of any action of the board of directors of the association involving the governing documents, any dispute in which an association seeks enforcement of the governing documents, and any dispute alleging the failure of an association or parcel owner to comply with the requirements of this chapter or the governing documents of the community.

This bill then specifically provides that only disputes between an association and a parcel owner are within the jurisdiction of the pilot program. However, in s. 720.504(4), F.S., the bill provides that a parcel owner may commence a proceeding under the pilot program against another parcel owner for any violation of the governing documents or controlling statute.

This bill provides that officers and directors of the association cannot be parties to proceedings under the pilot program. However, tenants or guests of parcel owners can be parties under the pilot program if they are alleged to have violated the governing documents of the community, except that eviction proceedings are exempt from the jurisdiction of the pilot program. Disagreements relating to the imposition, reasonableness, or collection of fines, assessments, special assessments, or other fees owed by a parcel owner, lien foreclosure actions, or disagreements regarding the enforcement of a judgment are not subject to the pilot program.

This bill also provides that where there is a conflict between the jurisdiction of the pilot program and the mediation and arbitration provisions found in s. 720.311, F.S., the dispute must be filed pursuant to the pilot program and not pursuant to s. 720.311, F.S.

Procedures for Mandatory Filing; Filing Fee

This bill creates s. 720.505, F.S., to provide the procedures that must be followed when filing a petition under the pilot program. The bill provides that before filing a petition, the petitioner must provide the respondent with a written demand:

- Identifying the nature of the dispute;
- Demanding the relief sought;
- Stating that if the relief is not provided, then the dispute will be filed in the courts; and
- Providing the respondent with a reasonable period of time within which to provide the relief sought.

The petition will be dismissed if these provisions are not followed.

⁴ Section 718.1255, F.S., is the section in the condominium law that establishes mediation and arbitration dispute resolution between condominium association and their members. The rules and procedures in this section are also used to implement the current mediation and arbitration programs established by DBPR for disputes between homeowners' associations and their members.

This bill provides that a dispute within the jurisdiction of the pilot program must be filed with the division before it can be filed with the court. At the same time that the petition is filed with the division, the petitioner must provide a copy of the petition and attachments to the respondent by certified mail. The petition must be on a form adopted by the division, or must be substantially similar to the form; must include a copy of the demand letter described above; and must include portions of the governing documents relied upon in the petition.

This bill also provides that the division must direct an order to the respondent by certified mail that gives the respondent 14 days in which to file an answer to the petition. The answer must include any defenses, and if the respondent files a motion to dismiss, it must be accompanied by an answer and defenses in order to promote the timely resolution of the dispute. The answer may not include any claim that the respondent may have against the petitioner, but may address only the dispute stated in the petition. Where a party filing a petition demonstrates to the arbitrator that the party is in need of emergency injunctive relief, then the arbitrator may allow the party to file for a temporary injunction with the court.

This bill requires that the petition include a filing fee in the amount of \$150, payable to the division.

Arbitrators

This bill creates s. 720.506, F.S., to provide that the division must maintain a list of qualified arbitrators to hear the disputes described by the pilot program. In order to be an arbitrator in the pilot program, the bill requires a person to be:

- A member in good standing with the Florida Bar, and must have practiced law in the area of association disputes for at least 5 years; or
- A member in good standing of The Florida Bar who has passed the examination for community association manager licensed under s. 468.433.

The division may, by rule, adopt additional requirements for qualification.

This bill also provides that the arbitrator is to be compensated at the rate of \$150 per hour, but cannot receive more than \$600 for any single case. These fees must be divided equally between the parties to the dispute, and such fees must be paid in full within 15 days of receipt of the final order.

Arbitration Proceedings

This bill creates s. 720.507, F.S., to provide that an arbitrator can hear and decide disputes filed under the jurisdiction of the pilot program, but cannot hold a person in contempt. An arbitrator can issue subpoenas, and conduct a final hearing, if required, within 60 days after the filing of the petition, and must within 14 days after the final hearing issue a final order. The final order is binding on the parties if a complaint for a trial de novo is not lawfully filed in a court within 30 days after rendering a final order. The final order of the arbitrator is admissible in any appeal of the final order.

The bill also provides that a final order of the arbitrator that has not been timely appealed can be enforced by filing a petition for enforcement in circuit court. The prevailing party in an enforcement action is entitled to reasonable costs and attorney's fees.

This bill provides that the arbitrator can grant all relief necessary for the disposition of the dispute, including, but not limited to:

- Making a finding that a provision contained in the governing documents is invalid and unenforceable;
- An order enforcing the provisions of the governing documents and statute;

- An order requiring an association or parcel owner, tenant, or guest to comply with the governing documents or statute; or
- An order finding that the association has selectively enforced its governing documents.

This bill provides that an arbitrator may not amend the governing documents of a homeowners' association.

In making a determination to resolve a dispute under the pilot program, the arbitrator must follow and apply the applicable statute as well as controlling case law. An arbitrator under the pilot program is also subject to the standards of professional conduct contained in the Florida Rules for Court-Appointed Arbitrators. An arbitrator may not preside over a dispute involving a party currently represented by the arbitrator, but may preside over a dispute involving a former client where both parties, upon disclosure of the prior representation, consent in writing.

An arbitrator may award reasonable costs and attorney's fees to the prevailing when the arbitrator has determined that the conduct of a party has been unreasonable. A member prevailing in an action against an association under the pilot program can also be awarded additional amounts as determined by the arbitrator to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the arbitration. This relief does not exclude other remedies provided by law.

C. SECTION DIRECTORY:

Section 1 creates an unnumbered section, establishing Part IV of ch. 720, F.S., and entitling it the "Home Court Advantage Pilot Program.

Section 2 creates s. 720.501, F.S., relating to the legislative intent of establishing the Home Court Advantage Pilot Program.

Section 3 creates s. 720.502, F.S., providing definitions.

Section 4 creates s. 720.503, F.S., relating to the rules of procedure and the reporting requirements of the division.

Section 5 creates s. 720.504, F.S., relating to the jurisdiction of the Home Court Advantage Pilot Program.

Section 6 creates s. 720.505, F.S., relating to the filing requirements of a petition and filing fee.

Section 7 creates s. 720.506, F.S., relating to the arbitrators under the Home Court Advantage Pilot Program.

Section 8 creates s. 720.507, F.S., relating to the proceedings under the Home Court Advantage Pilot Program.

Section 9 provides an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill would appear to reduce state government revenues to the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. Under current law, the Department of Business and Professional Regulation collects \$200 per petition filed for resolving disputes between

homeowners' associations and parcel owners through mandatory arbitration and mediation. This bill replaces the current dispute resolution program with a mandatory arbitration pilot program in Hillsborough and Pinellas County to resolve all disputes related to the governing documents that arise between homeowners' associations and parcel owners. However, DBPR under the pilot program may only collect \$150 instead of \$200, and therefore will generate less revenue in providing for this dispute resolution program. The amount of the impact is indeterminate because it is unknown how many cases will be filed within the pilot program.

2. Expenditures:

This bill appears to increase state government expenditures because of the increased workload that would be required by the circuit courts and DBPR to implement the Home Court Advantage Pilot Program. The state will also be responsible for any increased costs associated with the use of the circuit court facilities to implement the pilot program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill appears to increase local government expenditures by requiring the clerks of the circuit court to handle an increased workload.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill decreases the fee that a petitioner must file in order to participate in dispute resolution within DBPR from \$200 to \$150, and requires the petitioner and respondent to split the fees charged by the arbitrator, which cannot be more than \$600.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill provides that the rules and procedures for the operation of the Home Court Advantage Pilot Program are to be the same rules adopted by the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) pursuant to s. 718.1255, F.S., and any additional rules and procedures. The bill provides that the division may adopt other rules pertaining to the qualification requirements of the arbitrators.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Subsection (2) and subsection (4) of s. 720.504, F.S., created in this bill appear to be in conflict. One section says only dispute between an association and a parcel owner are within the jurisdiction of the pilot program, but the other section says that a parcel owner can commence a proceeding under this act against another parcel owner for any violation of the governing documents or controlling statute.

D. STATEMENT OF THE SPONSOR

The bill sponsor provided the following statement pertaining to the bill as originally filed:

"Thank you for the opportunity to respond to the staff analysis on HB 923. There are a number of drafting errors in the proposed bill that will be clarified along with the revised proposal that includes input from the appropriate stakeholders who have been working closely with the sponsor to address all of the concerns raised by staff in this analysis. The Home Court Advantage Pilot Program will be harmonized to work with other existing dispute resolution programs. Home Court is intended to be another tool in the toolbox to owners living in deed restricted communities to be able to resolve their disputes at a minimum of costs."

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 21, 2007, the Committee on Courts adopted one amendment to this bill. The amendments made the following revisions:

- Revised the definition of "community association" to provide that it does not include any association where a developer elects or appoints a majority of the members of the board of directors of the association;
- Provided that the phrase "parcel owner" means the owner of legal title to a parcel governed by a community association;
- Provided that the word "dispute" means a disagreement between a community association and a parcel owner concerning the validity or enforcement of restrictions contained in the governing documents of a community association, and includes the failure of the association or parcel owner to comply with the requirements of ch. 718, ch. 719, ch. 720, and ch. 721, F.S.;
- Provided that a petitioner is the party filing a petition under this Pilot Program and respondent is the party responding to the petition;
- Provided that the word "developer" means the entity creating the community operated by the association, or any entity that offers residential parcels for sale or lease in the ordinary course of its business within that community;
- Provided rule making authority to the chief judge of the Thirteenth and Sixth Judicial Circuits;
- Provided that the judge must direct a report to the Florida Supreme Court within 60 days following the conclusion of the Pilot Program reviewing the operation and results of the program;
- Provided that officers or directors of the community association cannot be parties in proceedings under the Pilot Program;
- Provided that disagreements relating to the imposition, reasonableness, or collection of fines, assessments, special assessments, or other fees owed by a parcel owner, lien foreclosure actions, or disagreements regarding the enforcement of a judgment, are not subject to the Pilot Program.
- Provided that where a dispute is also subject to the arbitration and mediation provisions in ch. 718, ch. 719, and ch. 720, F.S., the dispute must be filed under the Pilot Program provisions, except for recall or election disputes;
- Provided procedures for filing petitions with the clerk in the county where the community association is located;
- Increased the filing fee to \$255;
- Provided that the magistrate must be a member of the Florida Bar; and

- Provided the magistrate with certain powers and authority required to carry out the provisions of the Pilot Program.

The bill was then reported favorably with an amendment.

On April 18, 2007, the Safety & Security Council adopted one substitute amendment to this bill. The amendment substituted the amendment adopted by the Committee on Courts. The differences between this amendment and the substitute amendment adopted by the Committee on Courts are as follows:

- The pilot program consists of mandatory binding arbitration to be implemented by the Department of Business and Professional Regulation (DBPR) in cooperation with the chief judge of the 13th and 6th judicial circuit courts.
- The pilot program will only apply to disputes between homeowners associations and their members, and will not apply to all community associations.
- Petitions are to be filed with the Division of Florida Land Sales, Condominiums, and Mobile Homes within DBPR, and not with the clerk of court.
- The filing fee to be paid by the petitioner is \$150.
- The arbitrator must be a member in good standing with the Florida Bar and have 5 years experience handling association disputes, or be a member of the Florida Bar in good standing and have passed the examination to be a licensed community association manager.
- The arbitrator cannot charge more than \$150 an hour, or more than \$600 total, and the parties to the dispute pay this fee equally.
- A member of an association that prevails in a dispute with the homeowners' association can also be awarded additional amounts necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses related to the arbitration.

This bill was then recorded favorably with a council substitute. This analysis is drafted to the council substitute.